THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

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W.P.No.27159 of 2005

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% 14.02.2006

Between:

P.B.B. Narasimha Rao S/o P. Kaleswara Rao
Environment Protection Training & Research Institutie, R/o LIG 596, Bharati Nagar, R.C. Puram, Hyderabd

..... PETITIONER

AND

1 The Environment Protection Training & Search Institute rep by Chaiman & Chief Secretary to Government
A.P., Secretariat, Hyderabad and another

.....RESPONDENTS

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! Counsel for the Petitioner: Sri C.Srinivasa Baba,

^ COUNSEL FOR THE RESPONDENTS: Sri D.V.Seetarama Murthy

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> Head Note:

? CITATIONS:

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JUDGMENT:

The petitioner was appointed as an Administration and Accounts Officer in the respondents-Institute. He was placed under suspension through orders dated 06-06-2005. This was followed by issuance of charge memo dated 17-06-2005. The petitioner submitted his explanation to the charge memo, on 21-07-2005. The disciplinary authority appointed one Mr.K.Kumar, as an Enquiry Officer. Thereafter, one Mr.T.V.Satish Babu, Administration Incharge of the Institute, was nominated as Presenting Officer.

The petitioner raised an objection as regards the appointment of Presenting Officer, through a petition dated
29-10-2005. His contention was that, according to the prescribed procedure, a

Presenting Officer must be superior, in rank, and the one, appointed in the instant case, is subordinate to him. The objection was overruled by the Enquiry Officer, through a detailed order dated 10-11-2005. The petitioner preferred an appeal to the superior authority, and did not participate in the enquiry, subsequent to 10-11-2005. The Enquiry Officer proceeded with the matter and submitted his report, holding that the charges framed against the petitioner are proved. The 2nd respondent issued a show-cause notice dated 07-12-2005, directing the petitioner to explain, as to why suitable punishment shall not be imposed against him. The petitioner challenges the same.

In the coutner affidavit filed on behalf of the respondents, the sequence of events, that gave rise to the initiation of disciplinary proceedings, and issuance of the impugned memo; are narrated, in detail. It is stated that the memo relied upon by the petitioner, in support of his contention, that a Presenting Officer must be superior to the deliquent official, has no application to the disciplinary proceedings, in the respondent-Institute. It is further contended that once the appropriate authority has ruled that the objection raised by the petitioner cannot be entertained, the petitioner ought to have participated in the proceedings. Issuance of the impugned memo, is sought to be justified.

Sri C. Srinivasa Baba, learned counsel for the petitoner submits that the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 (for short 'the CCCA Rules') are applicable to the Institute and the purport of sub-rule (5) (6) of Rule 20 thereof, was clarified by memo dated 01-05-1993, to the effect that the Presenting Officer must be superior in rank, to the deliquent officer. He contends that the Presenting Officer appointed in the instant case, functioned as subordinate to the petitioner, and at any rate, he cannot be treated as superior to the petitioner, and thereby, incurred disqualification for acting as Presenting Officer.

Learned counsel further submits that the Enquiry Officer passed an order dated 10-11-2005, on the basis of several assumptions, overruling the objection raised by the petitioner, and even while the appeal filed against it, before the 1st respondent, was pending, enquiry was proceeded with. He ultimately contends that the petitioner was denied adequate opportunity, and thereby, the impugned memo results in violation of principles of natural justice.

Sri D.V. Seetarama Murthy, learned counsel for the respondents submits that though

the Rules are adopted by the respondents-Institute, the clarification contained in memo dated 01-05-1993, does not apply to the disciplinary proceedings, initiated against the employees of the respondents, as it was not specifically adopted. Learned counsel submits that whatever may have been the basis for the petitioner in obstructing the proceedings, by raising a contention as to the alleged disqualification of appointment of Presenting Officer, there was no justification for him, in not participating in the proceedings, even after the objection was overruled. He contends that the petitioner does not deserve any indulgence of this Court.

The 2nd respondent initiated disciplinary proceedings against the petitioner and an Enquiry Officer was appointed. For the purpose of presenting the case on behalf of the respondents, one Mr.Satish Babu, was appointed as Presenting Officer, whereas the petitioner was permitted to avail the services of a defence assistant. The proceedings went on, smoothly, up to the examination of witnesses, in relation to five charges. At that stage, the petitioner came forward with a representation, dated 29-10-2005, stating that the Presenting Officer is not superior to him, and thereby cannot act as such. He placed the reliance upon the memo dated 01-05-1993, issued by the Government. The Enquiry Officer overruled the objection. The enquiry was proceeded with, and a report was submitted. Based on the same, the impugned memo dated 07-12-2005 was issued. In view of the extensive submissions made on behalf of the parties, two questions arise for consideration, *viz*.,

1. Whether the Presenting Officer is not qualified to be appointed as such, and

2. Whether the impugned show cause notice suffers from any infirmity.

As regards the first question, it needs to be observed that the Institute stipulated a set of conditions, governing the service, of its officers and staff. The CCCA Rules of the State of A.P. were made applicable to the services in the Institute. Rule 20 (5)(c) of the CCCA Rules provides for appointment of a Presenting Officer. It is true that, in memo dated 01-05-1993, the Government clarified that the competent authority must ensure that the Presenting Officer is superior, in rank, and senior to the charged officer.

In the ordinary course of things, whenever a set of rules, prevailing in one

organization, is adopted by another organization, the clarifications and interpretations placed on such Rules would also become applicable. Where, however, in the process of adaptation, the other organization takes precaution and regulates the extent of applicability, different situations would emerge. In the instant case, Clause 14 of the Conditions of Service of the Institute reads as under:

> "**Clause-14**: In regard to all matters concerning service conditions of the employees of the Institute, Fundamental Rules & Service Rules of the Government of Andhra Pradesh and such other rules and orders issued by the Government of Andhra Pradesh from time to time shall apply to the extent feasible and appropriate to the employees of the Institute. All Government orders issued from time to time, unless accepted and authenticated by the Board, cannot be implemented in the Institute." (emphasis supplied)

From this, it is clear that the Government Orders, obviously, those interpreting or clarifying the rules, referred to in the clause,
do not, *per se* become applicable to the service in the Institute. It is only when they are accepted and authenticated by the Board, that such Government orders would become applicable. The petitioner is not able to place any proceedings, or orders, through which, the Board of the Institute had adopted the memo
dated 01-05-1993. In view of this clear legal and factual position, the necessity to delve into the rival contentions, as to the equation of the status of the petitioner, on the one hand, and that the Presenting Officer, on the other hand, is obviated. In the result, the answer to this question, would necessarily be against the petitioner.

The second question needs to be examined, more from the point of view of the procedural safeguards. As observed in the previous paragraphs, the Enquiry Officer passed a detailed order
on 10-11-2005, overruling the objection raised by the petitioner. In view of the finding of this Court, on Question No.1, it is not necessary to examine the various observations made by the Enquiry Officer,
in the said order, particularly, those touching on the functions and duties of the petitioner, on the one hand, and the Presenting Officer on the other hand. Before passing the said order, the Enquiry Officer had the advantage of the clarification given by the Director General.

The petitioner did not participate in the proceedings, after the objection raised

by him was overruled by the Enquiry Officer. Had it been a case where the petitioner just ignored the ruling given by the Enquiry Officer, this Court would not have felt the necessity to examine the matter further. The petitioner categorically stated that he submitted an appeal before the 1st respondent on 16-11-2005, against the order dated 10-11-2005 passed by the Enquiry Officer. The averment made to this effect in the affidavit, was not disputed by the respondents in their counter affidavit. The fact that an appeal has been preferred was brought to the notice of the Enquiry Officer, by the defence assistant of the petitioner, through letter dated 16-11-2005. Even now, it is not clear as to whether the appeal preferred by the petitioner was disposed of, or not. Assuming that the appeal preferred by the petitioner was either not maintainable or did not merit any consideration, fairness requires that the enquiry proceedings are deferred, till the appeal is disposed of, one way or the other. It is not as if the proceedings were pending for months together.

In the disciplinary proceedings, fairness in procedure, is one of the most important protections, guaranteed to an employee. The conclusions arrived at, by the enquiry officer, or, for that matter, the disciplinary authority, on facts, are not usually interfered with,
by the Courts. Wherever the disciplinary proceedings are assailed before Courts, the emphasis is, mostly on the procedural aspects. In the instant case, the Enquiry Officer proceeded to examine the witnesses and to record his findings, without participation of the petitioner. At the cost of repetition, it needs to be noted that the appellate authority did not pronounce upon the objection raised by the petitioner. Naturally, petitioner would be entitled to await such an outcome, and his non-participation in the proceedings cannot be said to be without any basis. Therefore, the proceedings in the enquiry, subsequent to the order dated 10-11-2005, passed by the Enquiry Officer, become unilateral in nature, and the procedural safeguard, stands denied to the petitioner.

Learned counsel for the respondents has strenuously contended that the petitioner did not suffer any detriment, and as such, it is not necessary to give him an opportunity afresh, much less, to set at naught, the impugned show cause notice. However, once it has emerged that the petitioner was denied an opportunity to participate in the proceedings, he cannot be made to suffer, and in a way, it cannot

be said that the prejudice is apparent.

The submission of an enquiry report, without participation of the petitioner, in the enquiry, particularly when the appeal preferred by the petitioner was pending, and the resultant show cause notice, issued on the basis of such report, would defeat the very elements of fairness, which are embedded at the various stages of disciplinary proceedings. Therefore, the petitioner deserves to be given an opportunity.

For the foregoing reasons, the writ petition is partly allowed as under;

a. It is held that the Presenting Officer appointed in the disciplinary proceedings initiated against the petitioner, does not suffer from any infirmity, or disqualification.

b. The report of the Enquiry Officer and the impugned show cause notice are set aside. The Enquiry Officer shall resume the proceedings from the stage, where the petitioner raised an objection, as to the competence of the Presenting Officer. For this purpose, the petitioner shall appear before the Enquiry Officer within one week from today, by himself, or together with his defence assistant. The examination or cross-examination of witnesses shall be completed by the petitioner, within one week from the date of first appearance.

c. A fresh report shall be submitted by the Enquiry Officer, and the further proceedings would depend on the outcome of the enquiry.

d. There shall be no order as to costs.

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L. NARASIMHA REDDY, J.

Dt. 14-02-2006.

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